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SUITE 325
39 S. LASALLE STREET
CHICAGO IL 60603

MAILED

MAR 23 2010

OFFICE OF PETITIONS

In re Application of	:	
Davida et al.	:	
Application No. 09/303053	:	ON APPLICATION FOR
Filing or 371(c) Date: 04/30/1999	:	PATENT TERM ADJUSTMENT
Attorney Docket No.	:	
03,112	:	

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b), filed May 20, 2009. Applicant submits that the correct patent term adjustment to be indicated on the patent should be a total of 3369 days, not 317 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **GRANTED TO THE EXTENT INDICATED HEREIN.**

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is 1462 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 14, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 317 days.

On May 20, 2009, applicant timely submitted the present application for patent term adjustment¹. Applicant requests that the Determination of Patent Term Adjustment be corrected from 317 days, as indicated on the Determination of PTA mailed May 14, 2009, to an adjustment of 3369 days. Applicant asserts that the Office (1) erred in assessing a reduction of 1317 days to application in connection with the filing of the Information Disclosure Statement ("IDS") filed January 22, 2008, and (2) that the Office erred in neglecting to apply an adjustment of 1834 days pursuant to 37 CFR 1.702(a)(1), for failure of the Office to mail at least one of a notification

¹ PALM records show that the Issue Fee payment was received in the Office on May 21, 2009.

under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a).

A review of the record reveals that the IDS was filed prior to the mailing of an Office action, and thus, prior to any reply to an Office action within the meaning of 37 CFR 1.704(c)(8). The first Office action was mailed on January 9, 2009, with a reply thereto being filed thereafter. As such, the IDS filed January 22, 2008 was not filed as a supplemental paper within the meaning of 37 CFR 1.704(c)(8). A review of the application history further confirms that the IDS was not otherwise filed under circumstances that constitute a failure to engage in reasonable efforts to conclude prosecution. The period of reduction of 1317 days entered for the IDS is not warranted and is being removed.

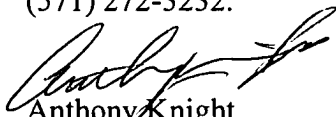
A further review of the record reveals that the present application was filed as a Continued Prosecution Application ("CPA") on May 29, 2002. Under the circumstances, the calculation of Office delay in accordance with 37 CFR 1.702(a)(1) and 1.703(a)(1), for taking in excess of fourteen months to mail a first Office action, is properly calculated using the mailing date of the Office action on January 9, 2009. Accordingly, an adjustment of 1991 days is properly attributed to the Office for the period beginning on July 30, 2003, the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a), and ending on January 9, 2009, the date of mailing of an action under 35 U.S.C. 132. There is no other basis for entry of a period of adjustment for Office delay. Thus the total period of delay is nineteen hundred ninety-one (1991) days.

In view thereof, at the time of allowance, the application is entitled to an adjustment of 1991 days.

Applicant's deposit account has been charged the petition fee of \$200.00 as authorized in the instant petition.

The application is being forwarded to the Publications Division for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Attorney Derek L. Woods at (571) 272-3232.


Anthony Knight
Supervisor
Office of Petitions

Enclosure: Copy of Adjustment PAIR Calculations

Day : Monday
Date: 3/22/2010

PALM INTRANET

Time: 14:03:22

PTA Calculations for Application: 09/303053

Application Filing Date:	04/30/1999	PTO Delay (PTO):	1843
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	1526
Post-Issue Petitions:	0	Total PTA (days):	1991
PTO Delay Adjustment:	1674		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
95	03/22/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	1674		
88	05/14/2009	MAIL NOTICE OF ALLOWANCE			
87	05/12/2009	ISSUE REVISION COMPLETED			
86	05/12/2009	DOCUMENT VERIFICATION			
85	05/12/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
84	05/11/2009	NOTICE OF ALLOWABILITY			
80	03/27/2009	DATE FORWARDED TO EXAMINER			
79	02/13/2009	RESPONSE AFTER NON-FINAL ACTION			
78	02/17/2009	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
77	02/11/2009	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
76	01/09/2009	MAIL NON-FINAL REJECTION	1548		70
75	01/06/2009	NON-FINAL REJECTION			
74	01/22/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
73	01/05/2009	CASE DOCKETED TO EXAMINER IN GAU			
72	01/22/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
71	01/05/2009	DATE FORWARDED TO EXAMINER			
70	06/14/2004	RESPONSE AFTER NON-FINAL ACTION		209	58
69	07/01/2008	MAIL NOTICE OF RESCINDED ABANDONMENT			
68	06/30/2008	NOTICE OF RESCINDED ABANDONMENT IN TCS			
67	03/29/2006	MISCELLANEOUS INCOMING LETTER			

66	01/22/2008	REFERENCE CAPTURE ON IDS			
65	01/22/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		1317	70
64	02/17/2005	MISCELLANEOUS INCOMING LETTER			
63	05/13/2005	MAIL-PETITION TO REVIVE APPLICATION - GRANTED			
62	05/17/2005	PETITION TO REVIVE APPLICATION - GRANTED			
61	06/17/2004	PETITION ENTERED			
60	05/19/2004	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION	295		28
59	05/17/2004	ABAND. FOR FAILURE TO RESPOND TO O. A.			
58	08/18/2003	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE RCE AMENDMENT			
57	08/15/2003	NOTICE OF INFORMAL OR NON-RESPONSIVE RCE AMENDMENT.			
56	01/05/2009	CASE DOCKETED TO EXAMINER IN GAU			
49	06/30/2008	CASE DOCKETED TO EXAMINER IN GAU			
46	06/30/2008	CASE DOCKETED TO EXAMINER IN GAU			
29	08/15/2003	DATE FORWARDED TO EXAMINER			
28	05/29/2002	CONTINUING PROSECUTION APPLICATION - CONTINUATION (ACPA)			
27	08/15/2003	DISPOSAL FOR A RCE / CPA / R129			
26	07/25/2003	MISCELLANEOUS INCOMING LETTER			
11	05/29/2002	REQUEST FOR EXTENSION OF TIME - GRANTED			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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